

US EPA ARCHIVE DOCUMENT

National Advisory Council for Environmental Policy and Technology

Federal Advisory Committee

Summary of the Title VI Implementation Advisory Committee Meeting

Approved by Committee (1/11/99)

*Tucson, Arizona
October 18-20, 1998*

NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY AND TECHNOLOGY

Title VI Implementation Advisory Committee Meeting

Summary of Third Meeting
Tucson, Arizona
October 18-20, 1998

AGENDA

October 18, 1998—Afternoon Session

- Welcome, Agenda Review and Introductions
- Agenda Review and Approval
- Approval of Philadelphia Meeting Minutes
- Statement from EPA Leadership and Review of the Committee's Charge
- Tribal Panel Presentation
- Workgroup Meetings
- Plenary Progress Reports from Workgroups

October 19, 1998—Morning Session

- Tour of Environmental Justice Sites in Tucson:
 - ◊ Political/Cultural/ Historical Overview from Sentinel Hill
 - ◊ Neighborhoods Affected by Pollution and Urban Renewal
 - ◊ Sunnyside School/Neighborhood Visit
 - ◊ Local Restaurant Presentation

October 19, 1998—Afternoon/Evening Sessions

- Presentation by City of Tucson government representative
- Workgroup Sessions
- Public Comment Session

October 20, 1998—Morning Session

- Discussion of Tribal Presentation, South Tucson Tour and Public Comments: What Areas and Elements Can Be Incorporated Into the Work of the Committee?
- Workgroup Sessions

October 20, 1998—Afternoon Session

- Reports From Each Workgroup on the Status of Their Work
- Process Group Report, Timetable and Process of Developing a Final Report
- Other Business
- Wrap up and Adjourn

MEMBERS PRESENT:*Elliot Laws, Chair**Sue Briggum**Robert Bullard**John Chambers**Luke Cole**Rosemary Corbin**Eileen Gauna**Tom Goldtooth**Walter Handy**Russell Harding**Lillian Kawasaki**Richard Lazarus**Charles Lee**Langdon Marsh**Barry McBee**Richard Monette**Richard Moore**Dell Perelman**Arthur Ray (for Jane Nishida)**Peggy Shepard**Robert Shinn**Haywood Turrentine*

Members Not Present: *Susana Almanza,
Cherae Bishop, John Gibson, Jane Nishida,
Gerald Torres*

OCTOBER 18: AFTERNOON SESSION

Opening Of The Meeting: Elliot Laws, Chair, welcomed the Committee and encouraged all members to review the workgroup documents carefully. He also suggested that members raise concerns openly and discuss them, while also considering the opinions of others. The Committee now has only a short time to complete these products. The Chair also suggested that a drafting group be formed to develop a final report for full group consideration. In the process of developing consensus, Committee members will be asked whether they concur with the recommendations. If not, their rationale will be stated in the report.

Agenda Review: Mary Margaret Golten, facilitator, reviewed the agenda for Sunday and the rest of the meeting. Members approved the agenda. The facilitator noted that all members had been provided copies of the group's process guidelines (Principles of Agreement) and the Committee Charge as reminders of matters discussed and approved at the first meeting in May, 1998

Charles Lee requested time on the agenda to discuss incidents that occurred in Chester following the group's visit there in July.

The Committee agreed that Arthur Ray should sit at the table in Jane Nishida's absence. The group also agreed that other alternates will be afforded the same courtesy, as long as they have been following the Committee's work closely and serve consistently.

Approval of Philadelphia Meeting Notes: The notes of the July meeting in Philadelphia were approved without additional changes.

COMMENTS FROM PETER ROBERTSON, ACTING DEPUTY EPA ADMINISTRATOR:

Peter Robertson expressed thanks and gratitude from Administrator Carol Browner. He noted that the Committee's task is challenging and time is limited and that the most important contribution of the Committee will be recommendations regarding a template or tool kit that states can use to address Title VI issues.

Robertson stated that EPA leadership recognizes the Committee will not reach agreement on all issues. Where the Committee can reach consensus, that will be extraordinarily valuable. Where the Committee cannot reach consensus, they are to set out the areas of disagreements and describe the pros and cons. This discussion of disagreements will be valuable to EPA as well. Robertson concluded by saying that he looks forward to meeting with the Committee in December and reviewing its final product.

Committee Discussion

In discussion following Peter Robertson's, the following issues were addressed:

- Several members expressed concern about the difference in members' resources for participation in the Committee's deliberations, and the resulting potential for an unjust and unfair process. They stated that members from government and industry representatives have greater resources for participation compared with community representatives. They further noted that the states have had the opportunity to participate in discussions in other venues.
- Another member expressed concern about the political fate of the guidance and the demand from some quarters not to implement the interim guidance until the guidance is final. Apparently EPA will be prohibited from using funds to process

complaints received after the bill is passed until the final guidance is issued.

- The group discussed developments in the Shintech case in Louisiana. EPA has not received official notice from the Louisiana Department of Environmental Quality that the company's permit application has been withdrawn. The case will be held in abeyance awaiting a final determination.
- Ann Goode, Director of the EPA Office of Civil Rights (OCR), noted that approximately 110 sets of comments have been received on the interim guidance. They have been sorted by issue and EPA is planning a series of problem-solving sessions to seek input from stakeholder groups in order to help craft revised guidance. Once new draft guidance has been developed, it will be submitted again through stakeholder review and published in the federal register. The agency is planning to adopt final guidance by the summer, 1999. The proposed process for developing Final Guidance is as follows:
 - ◇ EPA will sort and analyze all comments received
 - ◇ EPA will review all of the comments by issue
 - ◇ OCR will develop a series of policy papers addressing the issues
 - ◇ EPA will organize problem-solving sessions by stakeholder groups, asking for input and assistance in crafting revised guidance
 - ◇ EPA senior management will review the policy papers and the results of the problem-solving sessions, and decide how the issues will be resolved
 - ◇ EPA will draft revised guidance
 - ◇ EPA will publish the draft revised guidance in the federal register
 - ◇ EPA will issue the Final Guidance by summer, 1999

TRIBAL PRESENTATION

Tom Goldtooth introduced the tribal presentation, noting that two community groups would make presentations. First, Pam Malone, representing the Petroglyph Monument Protection Coalition in the Albuquerque area, would talk about spiritual and cultural resources which are threatened by planned road construction. Second, Steve Lopez, representing the Mojave Tribe and Colorado Rivers Native Alliance, would make a presentation regarding their filing of a Title VI Complaint. Finally, Committee members Tom Goldtooth and Richard Monette would make comments.

Presentation of Pam Malone

The Petroglyph National Monument was established by Congress in 1990. This area of ancient petroglyphs is sacred to the Dineh and other area tribes. The Petroglyph National Monument on the west side of Albuquerque is 17 miles long and includes 7,200 acres. The tribes and their allies have set up the Petroglyph Monument Protection Coalition (PMPC) in the Albuquerque area with about 900 members. This is still an active religious site for native peoples and has artifacts that date back 2,000-3,000 years. The Indian culture includes a land-based religion that is tied to particular sacred sites. Agencies have asked the tribes to identify the specific areas that are sacred. The tribes feel they are being asked to reveal inner secrets.

The City of Albuquerque wants to build a commuter highway through a section of the petroglyphs. The PMPC is considering filing a Title VI Complaint against the city in order to protect the site. The group asked that EPA convene an interdepartmental meeting with the EPA, the New Mexico Department of Transportation and the Department of the Interior, but has not received a response. Senator Pete Dominici has introduced legislation to remove 8.5 acres from the Petroglyph National Monument, thereby

avoiding federal regulations in seeking approvals for the highway construction. New Mexico has also proposed using only state funds for the section of highway that would affect the petroglyphs, another means of avoiding federal scrutiny.

PMPC feels decision makers have no regard for public comment, and community-based organizations want alternatives and fairness for the public. The process does not seem fair when concerned tribal representatives have to talk about their sacred sites in one minute periods at public hearings. Real consultation with the tribes was held only after the decision was made. Tribes are forced to prove again and again what their culture and religion is about.

The authorities ask the tribes to define precisely which part of the petroglyph area is sacred. When discussing a church, which areas are sacred? Consider Mount Sinai: which part of Mount Sinai is sacred? Sacred sites are difficult to understand if you are not from a land-based religion.

Presentation of Steve Lopez

The Colorado Rivers Native Alliance has been struggling for 14 years against the proposed siting of a nuclear waste disposal facility in Ward Valley, California. The tribal groups feel they have been misled, misguided, and misinformed throughout the process.

Native American tribes have lived in the Ward Valley area for thousands of years and the area has artifacts from 8,000 years before Christ. Ward Valley is a sacred site used to heal the sick. Experience has shown that nuclear waste disposal sites are prone to leaking. The Mojave River flows just south of the proposed site. If the disposal facility leaks, it will effect the river and the tribes. This is not just an Indian issue, since the Mojave River provides water for people all over the West.

Those advocating for the facility say that the desert area is an ideal site for waste storage, even though it is a fragile ecosystem. The tribes filed a Title VI complaint with the Department of the Interior in February 1997, based on the potential social and economic impacts on health, as well as the threat to sacred lands. Since the filing of the complaint, there has been no direct response to the tribes' concerns. The tribes are frustrated and don't know where else to turn.

Comments of Tom Goldtooth

Tom Goldtooth described the problems of several other tribes. The Fond-du-Lac in Minnesota are faced with the expansion of a pulp mill facility. The tribe does not have the resources to promote environmental quality. This Committee should develop a policy that will be able to consider sacred and religious values. Historically, there has been poor political and legal relationships between tribes and government agencies at all levels, and a long history of discrimination complaints filed by native populations against the states. There are some positive models out there, but much conflict persists.

In Region V, tribes received documentation of higher risks because they consume a lot of fish and the mercury level affects people's health. Women have high levels of PCB contamination.

The Havasupai, who live in the Grand Canyon, have a very distinct culture. A company is working with Arizona officials to site a uranium mine nearby. The tribe exhausted all its resources for opposing an air quality permit two years ago.

Comments of Richard Monette

In North Dakota, there is a question of taking water out of the aquifer. The U.S. Fish and Wildlife Service said there was not enough documentation for any opposition. The tribe received a letter from the U. S. Department of Agriculture stating they were in the middle of helping us build a new sewer line. The USDA says they will stop helping us build this system unless we stop our opposition to the aquifer issue. We need to impress upon people that if the process is fair, then we are more likely to agree with the results.

Comments by Committee Members

- Members of the Committee expressed a need for basic information on sacred sites.
- One member noted that the New Mexico Department of Transportation has not taken a position on the highway issue. Some have suggested that the City of Albuquerque does not want to use federal funds in order to avoid dealing with the petroglyph issues. However, since Title VI is based on the 14th amendment, with or without federal money the amendment still applies to the City.
- State and local agencies appear to be distorting the process. In one case the State of California sued the federal agencies to try to stop an EIS. In New Mexico, Senator Dominici got a law passed to avoid the NEPA process, public involvement, and the EIS process. Violations of the process and actions taken to exclude people are causing people to file Title VI projects.
- The Albuquerque case has no physical health impacts, but spiritual health impacts are included. Ceremonies that have taken place from time immemorial will be stopped. Even if there were no health consequences in Ward Valley, there would be damage to the ability of the tribes to heal

their people. Impacts can be broader than health, and measurable human health impacts are not the only issues of concern. Cultural and process impacts give rise to Title VI complaints.

- What sort of process or prior consultation might have been effective to deal with these two situations? There may not have been much effort to reach out to the native communities. If state or federal agencies had implemented a consultative process, would that have addressed the concerns?
- This has been a problem since the Indian Reorganization Act of 1934. Indian Nations do not have the same level of respect as states and other political entities, or counties and cities, despite the nation-to-nation policy. Tribes feel that local, state and federal officials come to tell them what they are going to do, not to ask us what they think or want. The Fort Mojave tribe voted unanimously against the plant in Ward Valley, but the state's EIS did not include that. The tribes were also offered clinics and schools, but the tribal council did not accept them. It is about respect. Indian people believe in the law, even though they are lied to or side-stepped. Laws change due to political forces and tribes bear the consequences.
- Ward Valley would be a low-level nuclear waste site. Is there a process at the Nuclear Energy Agency to deal with the Title VI aspects of this?
- One member commented that the process would have been quite different if the highway in Albuquerque was proposed to run through the favorite golf course of the City council members?
- If measurable health impacts were required as a standard, then experts could not agree on the degree of risk from the proposed Ward Valley nuclear facility. The tribes do

not have the resources to hire experts. The impacts are unmeasurable. Even if the tribes did decide that cultural impacts were cognizable under Title VI, it still presents a bind. Tribes would have to describe religious ceremonies that their beliefs prevent them from describing.

- Indigenous peoples' cultural values should be reflected in the Guidance. Who are the experts on such issues? Could medicine men or tribal elders be given the same weight as a biologist or other scientists? Environmental impact reports are developed by outsiders.
- Although some have argued that spiritual impacts are not what we should be addressing, the same people can appreciate them. However, this process is about EPA water and air permitting programs. These are universal truths and larger questions, while our issues are much more limited.
- The opposition to the Ward Valley facility includes many aspects, including health and environmental effects, not only the cultural and religious ones.
- There can be harms that we don't have language to describe. People who raise the issues need to be comfortable with how they have been described.
- The workgroups will wrestle with what is an impact. Disparate impact is not limited to health.
- If we approached these issues with a sincere desire to understand, we would be able to deal with them more easily. The attempt to understand is often missing.

WORKGROUP REPORTS

Each workgroup reported on its progress to date, including the status of their written reports.

Pilot/Case Study Workgroup

The workgroup is planning to examine cases in Beaumont, Texas and Chester, Pennsylvania and is still discussing possible Native American cases. The process of completing the case studies was interrupted due to the lack of EPA funding. We still hope to complete the studies in a timely manner.

The workgroup is continuing to support development of a pilot in New Jersey. The workgroup has drafted criteria for pilots which is available to those who are interested, as are questions to be used in interviews for the case studies.

Workgroup I: Assessment

The workgroup is in the process of developing a draft report. The workgroup believes that it is in everyone's interest to have an accessible and transparent process. They are promoting a prospective strategy—to identify and avoid potential impacts, and lessen the likelihood of complaints. The workgroup has been emphasizing factors for determining communities of concern and indicators for when a community meets the profile of an impacted community.

The workgroup is also considering a system for implementing assessment under the prospective approach. The draft document includes beginning consensus definitions, understandings, and principles. The workgroup's approach includes three tiers: general screening, site-specific intervention, and legal review. The issues at each stage are somewhat different.

Workgroup II: Mitigation

The workgroup is working on a draft document representing its thinking, although the latest additions have not been discussed fully. The group considered how to address disparity through mitigation, including narrow, moderate, and broad nexus approaches. The

group is recommending against the broad nexus approach, but is coming to agreement on a hybrid approach addressing impacts directly (a in the narrow approach), but allows for addressing other issues of concern under a moderate approach.

The workgroup is also discussing procedural issues—how to ensure that the mitigation measures negotiated are actually implemented, including implications for community participation.

The workgroup also talked about being mindful of public comments and will review them in order to consider them in writing the report.

Workgroup III: Operations

The workgroup has created a 20-page draft document with the assistance of a neutral consultant. The draft identifies elements and areas of flexibility for state permitting programs. The process must address both individual permits and initiatives to deal with cumulative impacts.

The workgroup is discussing proactive measures for addressing Title VI issues that have been identified within the permitting process. A community-based cumulative impact analysis should be inclusive and informative. There would need to be special initiatives for enforcement and/or accelerated permitting processes.

The workgroup is sensitive to the potential for “redlining” communities. It is important to identify communities, but at the same time, avoid unintended adverse consequences.

In most cases, permitting authorities will want to use existing processes, not invent a special new track for environmental justice. But the existing processes can be improved. New Jersey has developed a model using negotiations and alternative dispute resolution processes. The procedures must address the

different concerns regarding new versus existing facilities. The suggested procedures must work for all levels of government. The workgroup is also considering how to offer incentives for permittees to voluntarily undertake processes.

OCTOBER 19, 1998—MORNING DEVOTED TO TOUR OF TUCSON.

OCTOBER 19, 1998—AFTERNOON SESSION

DISCUSSION OF THE COMMITTEE'S TIMELINE

In response to a comment by one Committee member, several others also expressed concern with the December 1998 deadline. The workgroups need to review their documents, attempt to reach consensus, and clarify the areas where consensus cannot be reached. It is difficult to imagine how the Committee can do this within the timeframe. If the Committee tries to compress the process in order to come with recommendations in December, the agreements may lack the necessary detail.

The process that EPA is proposing for coming up with a final guidance ought to be coordinated with this Advisory Committee's process. The public comments also need to be reviewed and considered carefully. Grassroots and other groups need time to have technicians review the proposals.

The Committee has volumes of materials to read and understand. Are we driven by a need to come up with a quality product or by an arbitrary deadline? The Committee needs to develop a product that will offer finality and decisiveness to the process. While a deadline is helpful for coming to closure, the Committee needs to integrate the three workgroup documents into one.

The Committee has resolved a lot of issues and has some tough ones that still need to be resolved. The Committee needs one more meeting to work on the tough issues.

The Committee was originally to provide a report to the administrator in November. We are now scheduled to have the report by the first of 1999. The mandated length of the committee is one year, which began on April 14, 1998.

At the conclusion of this discussion, it was the consensus of the Committee that they needed more time to complete their charge.

LOCAL GOVERNMENT PRESENTATION

Local officials had been invited to present their perspectives to the Committee following the group's tour of Tucson led by neighborhood and community representatives. Tucson City Council Member Steve Leal sent his regrets and asked his aide, Abe Marques to address the group.

Presentation of Abe Marques

Abe Marques welcomed the group to Tucson and described the city's efforts to address its five Superfund sites. A citizen advisory board works with the Air Force to set standards regarding base clean up and environmental issues. Tucson holds open houses to educate the community on the issues and works with Airport Authority on that site. Tucson is also concerned about communicating to the community at large about what is going on. Tucson's health clinic needs more federal financial support.

The south side of Tucson went through a horrible ordeal when the underground plume of pollution was discovered. The real estate market red-lined the south side and halted all loans. The people on the south side don't have water rights.

Comments from Committee Members

- Some states have addressed concerns about escalating property taxes by capping the tax rates and gearing them to inflation—a model that could be tried in Arizona.
- Members of the community try to raise concerns about defense facilities and end up feeling left out of the discussion. There is a level of alienation about communication around a land fill and transfer station.
- Tucson has developed a strong neighborhood associate program as the main communication link. This is not an EPA issue, but an issue between the city and residents. There are contrasting perspectives and interpretations. Tucson feels they have a strong relationship with the residents, but the residents do not feel they have involvement in discussions on the decisions impacting their lives.
- The south side suffers from historical zoning distortions decided before the area was incorporated into Tucson. These zoning distortions placed residential and industrial areas together.
- Tucson has no authority to dictate how hazardous wastes and materials are handled. They would like to have more local input on this, but if the land is zoned for industrial use, they can't keep siting from happening. In Arizona, once zoning is placed it can't be changed.
- In other states, municipalities redo the general plan and try to correct problems of zoning. There is a movement to locate

and pay penalties for negligence in allowing health risks.

- Critical incidents have resulted in local, state and federal agencies actively resisting community attempts to get information, to

living space within industrial zones, but so far, industry is against it.

WORKGROUP MEETINGS

The Committee adjourned to meet in workgroup sessions until the end of the afternoon and reconvened for the public comment session.

SUMMARY STATEMENTS FROM THE PUBLIC COMMENT SESSION

- A public school built in 1987 in South Tucson near a Superfund site was so contaminated it was not worth cleaning up and was closed. The investigation lead to environmental regulations to protect the public living near any Superfund site.
- There is inadequate agency monitoring of environmental hazards around Superfund sites and a lack of data management. The public wants the state and federal agencies to integrate their efforts and engage in greater cooperation to protect people.
- The public needs timely notice and veto power about decisions that affect them. People have concerns about getting access to adequate information. Agencies must respond to community concerns and listen to their ideas. Community access to information and participation is critical.
- Agencies must enforce the laws on the books, and suffer consequences if they do not. It is expensive for communities to appeal siting decisions to which they object. Perhaps agencies should be required to pay community people for their time as an incentive to avoid errors

initiate monitoring, and to get reliable tests. In one case, community protests were met with stun guns and arrests. Community members view the results as racism against their low income minority status.

Community members prove problems with their body count, not studies.

- Community members want involvement and the resources to participate. Some people fear campaigns to undermine Title VI by industry groups and others with resources.
- EPA should make clear what they will do with the findings of this Committee and avoid rushing the process.
- The Arizona Department of Environmental Quality has established environmental justice and tribal programs to address community concerns.
- When community representatives are asked to help organize events for groups like this Committee, they need to be treated with respect. EPA did not follow through with media information and invitations as they said they would. As a result, some important groups were not present. There were also logistical difficulties and slippage in arranging for the tribal presentation. [EPA staff offered personal apologies and pledged to devote sufficient resources to ensure that this doesn't happen again.]
- Community members need skills for reviewing government proposals and responding to technical and legal information. Some people avoid complaints because they fear losing their jobs. Communities need accurate information about how to obtain designation as a cancer cluster. Studies done door-to-door by the community are not recognized, and they are not validated by agency or academic studies.
- International and bi-national agreements and partnerships are subject to interpretation and ratification by states and are thus not secure vehicles for addressing environmental issues. The La Paz agreement of 1974 regarding

transboundary transport of chemical materials expires in 2000.

- The Unified Community Advisory Board for the Tucson airport area is limited to Superfund clean-up issues. Environmental justice issues are not addressed by government representatives. The area is 71% Hispanic (many Spanish-speaking only) and 31% of the citizens live below the poverty level. The purpose of the Presidential Executive Order is to protect these people. The neighbors are exposed to the most hazardous industries. EPA officials on the UCAB said they did not know about the Executive Order.
- In the Tucson area, the pigmy owl and Mexican wolf are endangered, and need EPA advocacy.

At the end of the public comment period, Committee members asked EPA staff to track the comments and send letters to commenters.

OCTOBER 20, 1998—MORNING

QUESTION ABOUT CANCER CLUSTERS:

A Committee member asked if there are objective criteria for the designation of cancer clusters. Walter Handy indicated that almost any health department can declare a cancer cluster, but it must be based on health organization official data. The South Tucson data was generated by community groups, so it was not accepted.

A cancer cluster designation is based on a higher than expected frequency of normal cancers or high frequency of rare cancers. Pollutants have a pathway to receptors that can be documented. Officials examine the statistical significance of the data. The fact that rates are needed and/or a stable population that can be tracked, makes it difficult.

Robert Shinn noted that Tom's River, New Jersey was designated a cancer cluster, based on a plume of contamination from a Superfund site. The public was not satisfied with data from the Department of Health and did a door-to-door survey to update the numbers. It was then qualified as a cluster. ATSDR, EPA, NJ Health, and Union Carbide all put in a lot of work. Union Carbide used their labs to assist with testing, especially for one particular suspected carcinogen. It was necessary to attempt to replicate the water supply from ten years earlier. This has been an intense process with lots of public involvement and is ongoing. The process identified Radium 226 in small amounts. Testing protocol has been changed to a shorter testing time to capture the radium.

Handy observed that designating a cancer cluster is a resource-intensive process involving a cancer registry most communities don't have. ATSDR is limited to Superfund sites. Areas that are not Superfund sites do not have registries. In response to designation, the local community often sues the PRPs and asks for expanded healthcare and screening, as well as expanded cleanup processes.

DISCUSSION OF TRIBAL PANEL, TUCSON TOUR AND PUBLIC COMMENT PERIOD

The Committee met in small groups to discuss two questions regarding the tribal panel presentation, the tour of Tucson, and the public comment period:

- What did you find most compelling?
- How will this effect the work of this group on Title VI issues?

Following the small group meetings, the following points were made by Committee members:

- There was a consistent pattern of comments among all of the people who spoke. There are systemic historical

problems that go beyond a permitting process. How can EPA assist these people to bridge the gulf between government agencies and elected officials? The Brownfields model may deserve attention as an interagency model for addressing problems. Non-Brownfields issues may not have the same economic incentives, but these issues go to the health and viability of communities.

- The cancer cluster issue warrants additional attention regarding the criteria and how areas get designated. How can these communities be assisted to determine if they have real problems and/or get them the help they need? If these are problems, why are they not addressed? Local officials or health people may have disincentives for addressing these problems. These issues are broader than our mandate, but the problem is also broader than our mandate.
- Many more agencies are involved than just the environmental agencies: departments of transportation, health, etc. The Committee needs to address how to make government staff, including technicians, understand how to do outreach to communities and how to develop an ethic throughout state government that their responsibility is to all people.
- The problem is bigger than our mandate. The cultural values, socioeconomic and political issues are legitimate/real, but are they the responsibility of the environmental permitting agency? The Committee can't look at this purely as a permitting issue.
- Communities want information early and to be brought in before there is a proposal for them to comment on. The Committee should look for ways, respecting the rights of everyone, to regularize obtaining community input before developing a proposed solution.

- The visits and public comment reflect a belief that government is one big happy family—a false assumption. Environmental organizations are not connected to public health organizations and they use different tools and orientation.
- There are constraints on participation when land use planning decisions are made. This puts pressure on the environmental agency to right the wrongs from improper land use planning. Does the agency have to live with given zoning or can they initiate a review of the process?
- There are lots of complaints that focus on the participation process, not on the actual environmental impacts. This Committee needs to address process, both for permitting agencies and for EPA. Many of the impacts that people talked about were not quantifiable, but dealt with displacement and cultural impacts. How can those questions be brought into the process?
- One strong theme is consulting early, before a decision-making process. Who is the “we” that goes out to consult? The communities have comprehensive issues that go beyond the permitting process. The Committee needs to think about structures or responses that involve more than just environmental permitting with local, state, and federal involvement under someone’s aegis. The governors are probably in the best position to convene such efforts, bringing all three levels of government together in a dialogue with the community.
- Capacity building for the community was a clear theme. The question is not whether government is accessible, but whether citizens can access government. This takes education and organization building that enables them to act.
- Land use and zoning are really planning and public health issues. Land use planning has to be worked out in each area in cooperation with the people that live there, the industries, and the agencies.
- We got a message in every presentation that the process must be well defined and communicated to every agency and applicant, and that the community must be full participants in the process.
- The current systems and processes sometimes exclude communities from participation in decisions that affect their lives. Title VI is there as a safety net, but can it solve up-front preventive issues? We can also identify other mechanisms that can be improved so that people don’t have to resort to Title VI.
- There is mistrust of government at all levels that is not always ill-founded. The process needs to be improved, but process complaints often arise because people don’t like the outcome. The same issues arise regardless of race: conflicting land uses, competing values, and socioeconomic problems. Representative democracy works, but people who claim to represent the community only represent certain interests. The Committee must outline process requirements for community participation, but avoid trying to use the environmental permitting system to right all of the injustices in society.
- Community people seemed hopeful about Title VI as a tool to finally address the problems they have been experiencing. To the extent that Title VI is unsuccessful as a legal tool, people will seek other statutes to get relief. This is an opportunity to create an incentive to address some of the problems.
- The Committee is hearing very different viewpoints regarding what is happening.

For instance, city government representatives in Tucson and Chester spoke of the great relationships they have with the community, while the community representatives talked about the absence of a relationship.

- Various people claim they represent communities. Elected officials don't necessarily represent communities, since money drives the election process. Grassroots organizations don't have the funds for campaigns, but their leaders do represent their communities.
- The Committee can recommend that EPA require permitting agencies to ask permittees whether they assessed impacts and whether they would affect a protected class. The permit applicant wants to know what standard they can rely on to know they have garnered the consent of the community, whether they have done enough. If the process requires them to do it, we have to say what is required, what is enough.
- The American economic system requires there be poor people to allow for the accumulation of wealth. But there is no requirement that the deaccumulation of wealth has to be from minority hands; that can be addressed.
- The U.S. Supreme Court has already employed a cultural impact analysis. In a case where a tribe was tied to a zone and the tribe had maintained the Indian character of the land, they were allowed to zone. That was a cultural analysis. EPA should say that, when a tribe issues a permit, white folks are not a protected class.
- Much of what the Committee has seen here in Tucson and in Chester goes beyond Title VI, although Title VI can be used as a leverage point to try to deal with these

issues. Permitting cannot solve everything and the Committee must be careful not to overwhelm the states. It is hard to get states to respond on permitting already, as a resource issue. Let's prioritize things properly to address the biggest problems.

- When cleaning up DOE facilities, companies must do a community outreach plan as part of the bid/permit process. The Committee might be able to get data on whether outreach worked—what was done, responses received, actions taken, etc. Were problems addressed better as a result of public input?
- Cultural impacts have to be included among the impacts we consider. Zoning is a part of past discriminatory impacts on communities. These are local issues and Title VI may or may not address them.
- Whether we are talking about cultural impacts or health, ultimately we are talking about impacts of all of our actions, wherever they are. The process goes to the question of impacts on people, whoever they are. The process needs to empower people who are not well empowered to participate by providing education and resources in comparison to other groups.
- The Committee heard lots of frustration on the bus tour and in public comments about enforcement and compliance, spills, etc. If industry and government does a credible job trying to remedy past wrongs, people may come to believe in their sincere willingness to work with them on future siting.
- When EPA was created, the major impacts were obvious and we used command and control to get a handle on them. Regulations and enforcement actions drove industry "inside the fence." That worked well for 25 years. Government processes are evolving away from command and

control to participatory processes. The chemical industry is stepping outside the fence to work with the community. This is not a government or minority group problem—it belongs to all of ours. Environmental justice is part of a new way to govern that is evolving. To do a good job, we need comprehensive information systems to give communities knowledge about their own situations. Even governments don't have adequate data to look at disparities well.

OCTOBER 20, 1998—AFTERNOON

WORKGROUP UPDATES

Workgroup I: Assessment

The fundamental idea is that all stakeholders looking for an accessible, predictable, precise, and transparent system for addressing and avoiding complaints. The assessment process is important in order to identify communities of concern and disparate impact.

The workgroup is working on a "prospective" approach that permitting agencies and industries would use in working with communities to address impacts and avoid Title VI complaints. The workgroup sees a two-step up-front process: 1) Look at community demographics and identify protected communities. (Possible measures include any community that has a greater percentage of protected classes than reference communities or 25% greater.) 2) Examine the environmental burden of the identified communities. Communities with a substantial burden would be communities of concern.

Impacts should be discrete, identifiable and traceable to a permitting action. The workgroup is still discussing which impacts the permitting agency should look at. Should they consider only those within their purview or any impacts that might give rise to a complaint?

The workgroup has developed a list of impacts that should be considered, assuming that an agency has jurisdiction. The workgroup is still discussing other impacts and has not yet defined "disparate" impacts.

The workgroup has not yet addressed the "retrospective" approach to resolving complaints that have been filed. There is concern that the prospective process should not bind the agency in the retrospective approach.

The workgroup is not in total agreement regarding the impacts of renewals and has mostly addressed new permits. They are agreed on the need for a checklist requirement for a process of notice and dialogue in the prospective approach.

The workgroup has worked on a definition of "community" and sees it as either a group of individuals who are part of a protected group living in a geographic area in proximity to the permitting facility in question, or experiencing common conditions. The workgroup agrees the community should include the area bearing the environmental impact (such as those affected by a plume).

The workgroup is still thinking about a system for performing assessments and then setting priorities on an ongoing basis. A comprehensive data base including good geographic information and demographic analyses is needed to support the process of developing community profiles. There are multiple factors that cause the need to intervene. Community profiles should not just draw a circle on a map, but understand what is going on in the community.

Under the prospective approach, government agencies need to facilitate dialogue between a potential applicant and the host community.

Workgroup II: Mitigation

The members of the workgroup present reached consensus on a hybrid approach to

mitigation. They recommend that the mitigation measures undertaken address the impacts as closely as possible, but with an option for broader considerations.

In developing its recommendations, the workgroup presumed several questions of law and has identified those in its report. The report deals with policy approaches, rather than legal aspects. One legal issue identified, but set aside, concerns the question of whether the filing of a Title VI complaint will stay a permit.

The report also addresses public participation/involvement in development of mitigation plans. The public needs to be involved in any mitigation negotiation, especially in early, informal dispute resolution. Another important aspect of the workgroup report addresses the need for monitoring and compliance with ongoing community involvement.

The workgroup did not address the differences between renewals and new facilities, and may need to go back and look at that.

It would be useful if all workgroups could frame vital questions of law that need to be addressed by EPA or the Department of Justice. It may be possible to get an administration position on those questions, but some may ultimately be determined in the courts.

Workgroup III: Operations

The workgroup is developing a two-track approach. The first addresses decisions on individual permits. The second attempts to ameliorate the cumulative effects of emissions on minority communities, rather than simply dealing with individual permits. The workgroup also hopes to make progress regarding distinctions between new facilities and renewal for existing facilities.

The workgroup discussed how to identify cumulative impacts and deal with the consequences of cumulative impacts. Existing

tools can be used to analyze cumulative impacts, but a checklist of sources that are not in the current data base, particularly smaller sources that are not permitted, would be needed. Some are of concern to the community but outside of Title VI consideration. The idea is to work with the community to solve problems that are not necessarily based on a relative calculation of risk across media.

The workgroup is calling for a transparent approach to community dialogue, addressing how it is undertaken, and who does what. It needs to result in enforceable agreements that can be sustained during implementation and facility operation, not just discussion and dialogue.

The workgroup is working on the question of incentives that would encourage a facility sponsor to go beyond the legal requirements. Perhaps they could receive credits for voluntary reductions of cumulative impacts. The workgroup would like to urge EPA to create incentives for states to set up programs modeled on principles; perhaps giving additional credit to prospective and relational approaches. The workgroup recognizes that there is strong incentive to comply with Title VI, but how do you look back at a prospective process and determine that it was good?

The incentive for a permitting agency to embark on this process is to avoid Title VI complaints on the back end. However, there is no way to circumnavigate the law through the prospective approach—nothing in Title VI says that you must not discriminate unless you go through the EPA-approved process. There is no safe harbor; at the end of the day the community can still file a complaint.

There are limitations on EPA's resources for affecting processes across the country. The workgroup expects to provide specific recommendations that will benefit thousands of decisions, rather than the handful of complaints that EPA may respond to in any one year.

COMMITTEE TIMELINE & PROCESS:

In response to concerns raised the previous day, the Process Group, facilitators, and EPA staff met during the lunch break to consider plans for how the Committee will complete its work.

Proposed Timeline (as amended by the Committee)

October 21 - November 7, 1998:

Workgroups complete their work on the documents

November 7 - December 11, 1998:

Committee members to work on outstanding issues

November 7 - December 11, 1998:

Drafting Group produces a Draft Final Report, with the assistance of a consultant

December 11, 1998:

Mail Draft Final Report to the full Committee

January 10-12, 1999:

Plenary Meeting in Washington, DC

Goals:

- Test Committee consensus on workgroup products
- Address outstanding issues
- Consider Draft Final Report

January 12 - February 15, 1999:

Receive Committee comments/concerns about the Final Report, incorporate into penultimate draft, and mail to Committee about February 15

February 28 - March 2, 1999:

Final Plenary Meeting in Washington, DC

Consultant to Assist Drafting of Final Report

Part of the proposal is to use an independent contractor to help draft the final report of the Committee, including its recommendations and the combined reports from the workgroups.

Rena Steinzor, a professor at the University of Maryland Law School, has been assisting Workgroup III and produced the draft report they have worked on through this meeting. It is proposed to use this same contractor to work on the report for the full Committee. After an extended discussion regarding possible conflicts of interest and the necessary knowledge of permitting and environmental justice issues, the Committee approved the use of this consultant, noting an objection from Arthur Ray.

Drafting Group

The Chair and facilitators had conferred with the Process Group and come up with a proposed Drafting Group to work on the final report. This group would work closely with the consultant and facilitators to develop a draft report for full Committee consideration. The Drafting Group would respond to drafts developed by the consultant before they are circulated to the full Committee.

The proposed members of the Committee were:

Sue Briggum
Eileen Gauna
Lillian Kawasaki
Richard Lazarus
Charles Lee
Langdon Marsh
Peggy Shepard
Richard Monette

After brief discussion, John Chambers, Dell Perelman and Robert Shinn were added to the group.

Although the Drafting Group will be a first point of contact, the consultant will be free to talk with anyone on the Committee. Conference calls among the Drafting Group and consultant can also be announced to all Committee members who can then participate within the limits of EPA conference lines. Individuals should also feel free to communicate directly with the consultant. During this process Committee members are also encouraged to communicate with each other, especially within the sectors.

One Committee member noted that the facilitators are also taking the notes and suggested that it would be best to have a separate person taking notes or perhaps conference calls could be tape recorded.

The Committee adjourned at 3:45pm